

August 21, 2002

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of the)	
Application Of Verizon Virginia, Inc., Verizon)	CC Docket No. 02-214
Long Distance Virginia, Inc., Verizon Enterprise)	
Solutions Virginia, Inc., Verizon Global Networks,)	
Inc. and Verizon Select Services of Virginia, Inc.)	
For Authorization To Provide In-Region)	
InterLATA Services in Virginia)	

COMMENTS OF ALLEGIANCE TELECOM OF VIRGINIA, INC.

Allegiance Telecom of Virginia, Inc. (“Allegiance”), by counsel, hereby submits its comments on the application of Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia, Inc., Verizon Global Networks, Inc. and Verizon Select Services of Virginia, Inc. (“Verizon”) for authority to provide in-region interLATA service in the state of Virginia. Verizon is not providing nondiscriminatory access to unbundled loops at cost-based rates as required by Competitive Checklist Items 2 and 4 and should not be authorized to offer long distance service in Virginia until it remedies this deficiency.

Summary

Allegiance is a facilities-based local exchange carrier (“CLEC”) providing service in Verizon’s territory in Virginia. Allegiance delivers service to its customers using a combination of its own switching facilities and unbundled loops purchased from Verizon. Section 271 of the Communications Act provides that a Bell Operating Company meets

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the statutory requirements for entry into the long distance market only where it is providing nondiscriminatory access and interconnection to its network in accordance with the 14 point Competitive Checklist and grant of its application would serve the public interest. Verizon fails to meet this test due to the high percentage of CLEC UNE DS1 orders it rejects allegedly due to “no facilities.”

Although the Hearing Examiner for the Virginia State Corporation Commission determined that Verizon’s “no facilities” policy adversely affects competition in Virginia and should be modified, he felt compelled to find that Verizon’s policy was compliant with this Commission’s rules and consistent with the Checklist based on the Commission’s order granting Verizon’s New Jersey 271 application. *In the Matter of Verizon Virginia, Inc. To Verify Compliance With The Conditions Set Forth In 47 U.S.C. § 271(c)*, Case No. PUC –2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner (July 12, 2002) (“Hearing Examiner’s Report”) at 116. By refusing in the past to evaluate Verizon’s practice of rejecting inordinately large numbers of CLEC orders for unbundled DS1 loops due to “no facilities” as part of the 271 process,¹ the Commission has implicitly condoned Verizon’s discriminatory provisioning policy and prompted Verizon to justify its conduct on the grounds that the Commission has determined that the policy does not violate the Commission’s rules. Allegiance submits that the record developed in this case clearly demonstrates that Verizon’s “no facilities” policy is applied in a discriminatory fashion and is unnecessarily raising the costs of competitors

¹ *Application of Verizon Pennsylvania, Inc. et al for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) (“*Verizon Pennsylvania Order*”); *Application of Verizon New Jersey, Inc. et al for Authorization to Provide In-*

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attempting to capture market share in Virginia. Based on this record, the Commission should deny Verizon's application pending modification of its "no facilities" policy.

I. Verizon Has Not Demonstrated Compliance With Checklist Items 2 and 4

Competitive Checklist Item 2 requires that Verizon demonstrate that it is providing nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). Checklist Item 4 requires Verizon to demonstrate that it is providing access to unbundled loops. Section 252(d)(1) of the Act requires Verizon to price unbundled network element at cost-based rates. Verizon does not meet these requirements. On the contrary, Verizon rejects a disproportionate number of CLEC UNE DS1 loop orders on the grounds that it allegedly has "no facilities" available to fill the orders. This practice forces CLECs to either inform customers that they cannot provide service as anticipated or, alternatively, to purchase equivalent facilities out of Verizon's special access tariffs at rates significantly higher than the cost-based rates necessary to satisfy Verizon's obligations under the Competitive Checklist.

Allegiance, like many CLECs, is dependent upon Verizon to provide the "last mile" loop facilities it needs to reach its end users. One of Allegiance's most popular products is an integrated voice/high speed data service provided over a DS1 circuit. In order to offer this service at a competitive price, Allegiance must be able to obtain the DS1s from Verizon as unbundled network elements and then add its own electronics. Verizon, however, rejects at least one out of five of Allegiance's orders for UNE DS1s

Region, InterLATA Services in New Jersey, Memorandum Opinion and Order, WC Docket No. 02-67, FCC 02-189 (released June 24, 2002) ("*Verizon New Jersey Order*").

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claiming that it has “no facilities” available to fill the orders.² Between January and June 2002, the percentage of Allegiance UNE DS1 orders that Verizon rejected due to “no facilities” ranged as high as 22% per month. Allegiance’s experience in Virginia is consistent with the “no facilities” rejection rate to which Verizon testified in the 271 proceeding before the Virginia State Corporation Commission. Verizon testified that its own studies show that between 10% and 30% of all high capacity UNE loop orders are rejected regionwide due to no facilities.³ Cavalier has experienced rejection rates as high as 39% on its UNE DS1 orders in Virginia.⁴

Verizon stands out among the other Regional Bell Operating Companies (“RBOCs”) in the number and variety of circumstances it uses to reject UNE loop orders due to “no facilities.” Allegiance and its affiliates operate in 36 markets across the country and order UNE products from every RBOC. No other RBOC rejects UNE orders for “no facilities” with the frequency or for the wide variety of reasons cited by Verizon. Verizon’s status as an extreme outlier is illustrated by a comparison of the rejection rates Allegiance experiences with other RBOCs and those it experiences with Verizon. In May, 2002, Verizon South rejected 23% of Allegiance’s UNE DS1 orders due to no facilities regionwide, while all other RBOCs combined rejected just 3% of Allegiance’s UNE DS1 orders.⁵

Verizon rejects UNE DS1 orders due to lack of facilities for any of the following reasons:

² Affidavit of Doreen Best, attached hereto as Exhibit A.

³ *Id.*; Hearing Examiner’s Report at 114.

⁴ Hearing Examiner’s Report at 116.

⁵ Best Affidavit; Hearing Examiner’s Report at 114.

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1. There is no repeater shelf in the Central Office or customer location or remote terminal.
2. There is no apparatus/doubler case available.
3. There is a need to place fiber and/or a multiplexer to fulfill the order.
4. There is a need to adjust the multiplexer to increase capacity.
5. There is no riser cable or buried drop wire if a trench or conduit is not provided.
6. The copper cable is defective, and there are no spares available; Verizon would need to place cable (fiber or copper) for spares.⁶

Significantly, Verizon does not reject DS1 orders it receives from its retail end users under these same circumstances. In the Virginia 271 hearing, Verizon testified that it “will build for the retail side,” but will not do so for CLECs.⁷ To the extent that Verizon routinely undertakes minor upgrades to make DS1s available to its own retail end users, rather than reject their orders, Verizon’s refusal to accord its CLEC wholesale customers comparable treatment is discriminatory and deprives CLECs of the ability to offer their own customers a competitive service.⁸

In the Verizon Virginia arbitration proceeding, this Commission confirmed that Verizon cannot refuse to provision an unbundled loop “by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment because the requesting carrier is entitled to a fully functioning

⁶ Best Affidavit.

⁷ *In the Matter of Verizon Virginia, Inc. To Verify Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)*, Case No. PUC–2002-00046, Hearing Tr. 681.

⁸ *Id.*

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loop.”⁹ Based on this ruling, at least two of the reasons Verizon cites to avoid provisioning UNE DS1s – the need to place a multiplexer or adjust a multiplexer to increase capacity – clearly demonstrate that Verizon is not complying with its obligations to provide access to unbundled loops in accordance with the requirements of Section 251(c)(3) of the Act.

Allegiance is aware that in the *Verizon Pennsylvania Order*, the Commission declined to find that Verizon’s “no facilities” policy violated the Commission’s unbundling rules, stating that “new interpretive disputes concerning the precise content of an incumbent LEC’s obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules are not appropriately dealt with in the context of a section 271 proceeding.” *Verizon Pennsylvania Order* at ¶92. The Commission’s reiteration of Verizon’s unbundling obligations in the Virginia Arbitration Order unquestionably removes this matter from the realm of “new interpretive disputes” not appropriate for resolution in the 271 context. The Commission has examined and ruled upon the parameters of Verizon’s right to refuse to provision a UNE loop due to multiplexing issues and those rulings preclude a finding that Verizon is Checklist compliant.

At least two of the other “no facilities” circumstances that Verizon cites to reject UNE DS1 orders – no repeater shelf and no apparatus/doubler case – involve relatively minor adjustments that can be remedied without construction and for a modest amount of

⁹ *Petition of WorldCom, Inc. Pursuant to Section 252(e) of the Communications Act for Preemption of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expanded Arbitration*, Memorandum Opinion and Order, CC Docket 00-218, DA 02-1731, at fn. 1658 (released July 17, 2002).

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money. Because of the extremely negative impact the inability to obtain access to UNE DS1s has on Allegiance's business, Allegiance has raised the "no facilities" issue repeatedly in discussions with Verizon and in an attempt to resolve it, has made several proposals, including an offer to pay the cost of the repeater shelf or the apparatus/doubler case. Nonetheless, Verizon has been steadfast in its refusal to change its policy. Verizon's refusal to work toward a satisfactory solution to this very serious problem translates into a win for Verizon in its effort to restrain CLEC entry into the broadband market.¹⁰ Verizon testified that it is currently installing only 100 to 200 high capacity UNE loops per month in the entire state of Virginia.¹¹

II. Provisioning Special Access Does Not Satisfy Verizon's Checklist Obligations

Verizon's rejection of UNE DS1 orders due to "no facilities" creates numerous problems for Allegiance, not the least of which is provisioning delays. When Verizon rejects a UNE order due to "no facilities," it gives Allegiance two options: (1) either cancel the order and resubmit it at a later unspecified date when facilities may (or may not) be available or (2) cancel the order and resubmit it as an order for special access facilities. Neither of these options is acceptable. Under the first option, Allegiance is put in the position of having to inform its customer that it has no idea when or if it can deliver the service the customer ordered, because it cannot get a commitment date from Verizon as to when or if a UNE DS1 will be available. A customer ordering a DS1

¹⁰ Best Affidavit.
¹¹ Hearing Tr. 825.

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directly from Verizon would not experience a “no facilities” rejection because, as noted above, Verizon “will build for” its retail customers.¹²

Under the second option, while Allegiance is able to obtain a special access circuit that it can use to deliver its integrated voice/high speed data product to its customer in a more timely fashion, it is forced to pay Verizon significantly higher recurring and nonrecurring rates for the special access circuit than it would pay for a UNE DS1. The monthly recurring UNE rates in Density Cell 1 in Virginia are \$110.61 for the DS1 loop plus \$16.81 for the cross connect. The monthly recurring special access rates are \$198.24 per DS1. The special access nonrecurring charges are approximately *five times higher* than the UNE nonrecurring charges.¹³

Unlike UNE rates, special access rates are not required to be based on Verizon’s TELRIC costs. Because special access rates are not cost-based, they do not comply with Section 252(d)(1) of the Act. For this reason alone, the availability to CLECs of special access circuits does not satisfy Verizon’s obligations under Checklist items 2 and 4.

Aside from cost considerations, having to cancel a UNE order and resubmit it as a special access order adds significant delay to the provisioning process. Verizon’s requirement that Allegiance cancel the UNE order and resubmit a special access order increases the installation interval, and thereby delays initiation of service to the Allegiance customer, by approximately 30 additional days.¹⁴ These delays, to which Verizon’s retail customers are not subjected, are discriminatory and impede the ability of CLECs to provide timely and cost effective service to end users.

¹² Best Affidavit.

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To make a bad situation worse, Verizon has stated in recent meetings that it is evaluating its Special Access tariff and plans to modify that tariff to require CLECs to maintain a special access circuit for a minimum of one year prior to converting the circuit to a UNE. Of course, such a modification would force CLECs who purchase special access when their UNE orders are rejected due to “no facilities” to pay the much higher special access rates for a full 12 months. Such cost increases cannot help but severely limit the ability of CLECs to offer competitively priced service in Virginia, which will ultimately limit the choice of carriers available to the citizens of Virginia.¹⁵

III. Verizon’s “No Facilities” Policy Is A Reaction To Competition And Inconsistent with the Public Interest

If the Commission declines to conclude that Verizon’s “no facilities” policy is not at odds with its Checklist obligation to provide nondiscriminatory access to unbundled loops at cost-based rates, the Commission should still examine whether Verizon’s entry into the long distance market will serve the public interest given the existence of that policy and the Hearing Examiner’s determination that the “no facilities” policy has a significant and adverse effect on competition. The Commission has acknowledged that the overriding goal of reviewing a Section 271 application for compliance with the public interest standard is to ensure that nothing undermines a possible conclusion that the local telephone market is open to competition. As the Commission stated in the Arkansas/Missouri 271 Order,

The Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other

¹³ Best Affidavit.

¹⁴ *Id.*

¹⁵ *Id.*

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relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest, as Congress expected.¹⁶

Allegiance submits that Verizon's "no facilities" policy has the effect of frustrating congressional intent that the Virginia local exchange market be open to competition.

Although Verizon maintains that its "no facilities" policy has always existed, the evidence developed before the Virginia Commission shows that the policy was in fact put into place just over a year ago. In July 2001, Verizon sent a letter to all of its CLEC customers outlining its "no facilities" policy.¹⁷ The Verizon witnesses were unable to identify any publicly available document dated prior to July 2001 that advised CLECs of the types of electronics or equipment that Verizon would or would not install to fill a UNE DS1 order.¹⁸ Verizon sent out a "flash" to its entire engineering work force effective May 10, 2001 for the purpose of training the work force on the "no facilities" policy and on the UNE DS1 orders that should be rejected due to "no facilities."¹⁹

Allegiance did not start seeing an excessive number of UNE orders rejected due to "no facilities" until last summer. Similarly, Cavalier testified that prior to July 2001, Verizon would routinely install the same types of electronics and equipment to complete

¹⁶ *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant To Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Arkansas and Missouri*, CC Docket 01-194, Memorandum Opinion and Order, FCC 01-338 (released November 16, 1991) at ¶124 – 125.

¹⁷ Best Affidavit.

¹⁸ Hearing Tr. 664.

¹⁹ Hearing Tr. 810-812.

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UNE DS1 orders that it now refuses to install on UNE orders.²⁰ While Verizon acknowledged that the number of CLEC UNE DS1 orders rejected due to “no facilities” increased after July 2001, it attributed the increase to the fact that the “no facilities” policy had just not been enforced very well prior to that time.²¹

It is difficult to resist interpreting Verizon’s implementation (or enforcement) of a policy five years after the passage of the 1996 Telecommunications Act that results in the rejection of 10% to 30% of CLEC UNE DS1 orders as an attempt to maintain market share and to restrain the ability of competitors to offer their customers high capacity and/or high speed products, including broadband service. As noted above, Verizon’s preferential treatment of its retail customers and its denial of access to cost-based loops to its competitors negatively impacts the ability of facilities-based carriers, such as Allegiance, to offer timely and cost effective telecommunications alternatives to Virginia consumers. Verizon’s “no facilities” policy would not be implemented or enforced in a market that is truly open to competition.

In conducting its public interest analysis, Allegiance urges the Commission to give considerable weight to the following observations of the Virginia Hearing Examiner:

... I find that to fulfill our consulting role the Commission should advise the FCC that Verizon Virginia’s [“no facilities”] policy *has a significant and adverse effect on competition in Virginia*, is inconsistently applied across UNEs, is at odds with industry accounting rules, and *is inconsistent with TELRIC-pricing principles*.

From November 2001 through March 2002, Verizon Virginia confirmed orders for UNE DS-1s that if provisioned, would have provided the equivalent capacity of 117,240 voice grade circuits. Cavalier calculates its UNE DS-1 rejection rate

²⁰ *Id.* At 664, 810

²¹ Hearing Tr. 664, 810, 825.

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to be 39%. To put this level of activity in perspective, during this same five-month period, Verizon Virginia reported actual access line growth for CLECs in Virginia to be 116,652. These calculations indicate that UNE DS-1 loops are significant to competition in Virginia. Furthermore, Cavalier and Allegiance demonstrate that denied access to UNE DS-1s hurt their ability to compete as this increases both the time and cost to provide service. . . .

In addition, Verizon Virginia's application of what it considers construction appears to be inconsistently applied across UNEs. For example, during the hearing, Verizon Virginia confirmed that for UNE Loops, Verizon Virginia would provision the loop to a CLEC even if it is necessary for Verizon Virginia to add a new drop to a new home. This appears to be at odds with its strictly enforced policy for UNE DS-1 Loops. In addition, Verizon Virginia stated that it would make cable pairs available through line station transfers, but following its "no construction" policy, Verizon Virginia will not splice any of those available pairs into existing repeater cases.

Verizon Virginia's classification of opening a cable sheath to splice existing cable pairs into an existing apparatus case as construction for purposes of UNE DS-1 Loops is in conflict with the FCC's established accounting rules. Specifically, 47 C.F.R. § 32.5999(b)(3) states:

The Plant Specific Operations Expense accounts shall include the cost of . . . replacing items of plant other than retirement units; rearranging and changing the location of plant not retired. . . .

Thus, from an accounting perspective, the rearrangement of existing facilities, such as opening a cable sheath to splice existing cable pairs into an existing apparatus case should be accounted for as an expense and not as a capital item. Likewise, from an unbundling perspective, such rearrangements should not be treated as construction. Verizon Virginia offered no testimony reconciling accounting and unbundling treatment of these activities. For example, Verizon Virginia's Loops Panel could not address the application of the FCC accounting rules in regards to the rearrangement of existing facilities.

Finally, TELRIC pricing models, at least as applied by this Commission, include growth and fill factors. Such models are based on a fundamental assumption that the ILEC's network will grow to meet forecasted demand in Virginia. Fill factors reflect that a certain level of spare plant will continuously remain available to meet demand, and the costs associated with this plant are included in the TELRIC-based rates. Verizon Virginia's "no facilities" policy appears at odds with the development of TELRIC models because it appears to adopt a short-run assumption that no new plant is constructed to meet demand from CLECs. In

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other words, high capacity facilities are provided only when spares happen to be available to fill CLEC orders.

Based on the record and applicable FCC precedent, I find that Verizon Virginia provides loop transmission from the central offices to the customer's premises, unbundled from local switching or other services in accordance with the requirements of Checklist Item 4. However, Verizon Virginia's "no facilities" policy should be revised to require rearrangement and connection of existing facilities for all CLEC UNE Loop orders. Further, the FCC should analyze and adjust its TELRIC pricing models to be consistent with the implemented "no facilities" policy.²²

The Commission cannot ignore the finding that Verizon's "no facilities" policy is having an adverse effect on competition in determining whether Verizon Virginia has met its burden of showing compliance with the market opening provisions of Section 271. Allegiance submits that the public interest demands more. Verizon must significantly improve its performance before being granted permission to enter the interLATA market in Virginia.

Conclusion

For the foregoing reasons, the Commission should deny Verizon's application to provide interLATA service in the state of Virginia unless and until it demonstrates that it is providing nondiscriminatory access to unbundled DS1 loops at cost-based rates.

Respectfully submitted,

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²² Hearing Examiner's Report at 116-117 (emphasis added).

Allegiance Telecom of Virginia, Inc.

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ATTACHMENT A

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application by Verizon Virginia Inc.,)	
et. al., for Authorization)	
To Provide In-Region, InterLATA Services)	WC Docket No. 02-214
in Virginia)	
)	

AFFIDAVIT OF DOREEN BEST

I, Doreen Best, being first duly sworn, do hereby depose and state as follows:

1. I am Vice President LEC Management of Allegiance Telecom, Inc., the parent company of Allegiance Telecom of Virginia, Inc. ("Allegiance"). Allegiance is a facilities based competitive local exchange carrier that has been serving small and medium sized business customers in Northern Virginia since 1999. Allegiance uses a combination of its own switching facilities and unbundled network elements ("UNEs") purchased from Verizon Virginia Inc. ("Verizon") to provide service to its end users. I am submitting this affidavit to address Verizon's provisioning of unbundled DS1 loops in Virginia.

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2. One of Allegiance's most popular products is an integrated voice/data service provided over a DS1 circuit. In order to offer this service at a competitive price, Allegiance must be able to obtain the DS1s from Verizon as unbundled network elements and then add its own electronics. Verizon rejects an inordinate number of Allegiance's orders for UNE DS1s claiming that it has "no facilities" available to fill the orders. Allegiance does not believe that Verizon's "no facilities" policy complies with Verizon's obligation under the Competitive Checklist to provide nondiscriminatory access to unbundled network elements generally and unbundled loops specifically.

3. In July 2001, Verizon released a letter to its CLEC customers in which it listed the reasons it would reject UNE loop orders due to "no facilities." The reasons are:

- a. There is no repeater shelf in the Central Office or customer location or remote terminal.
- b. There is no apparatus/doubler case available.
- c. There is a need to place fiber and/or a multiplexer to fulfill the order.
- d. There is a need to adjust the multiplexer to increase capacity.
- e. There is no riser cable or buried drop wire if a trench or conduit is not provided.

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- f. The copper cable is defective, and there are no spares available; Verizon would need to place cable (fiber or copper) for spares.
4. Between January and June 2002, the percentage of Allegiance UNE DS1 orders that Verizon rejected due to “no facilities” ranged as high as 22% per month or more than one out of every five orders. Allegiance’s experience in Virginia is consistent with the “no facilities” rejection rate Verizon testified to in the 271 proceeding before the Virginia State Corporation Commission. Verizon testified that its own studies show that between 10% and 30% of all high capacity UNE loop orders are rejected regionwide due to no facilities.
5. At least two of the “no facilities” circumstances that Verizon cites to reject orders – no repeater shelf and no apparatus/doubler case – involve relatively minor adjustments that can be remedied without construction and for a modest amount of money. Allegiance has raised this issue repeatedly in discussions with Verizon and in an attempt to resolve it, has made several proposals, including an offer to pay the cost of the repeater shelf or the apparatus/doubler case. Nonetheless, Verizon has refused to change its policy. Verizon’s refusal to work toward a satisfactory solution to this very serious problem translates into a successful effort to restrain CLEC entry into the broadband market.

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6. Verizon does not reject DS1 orders from its retail end users due to “no facilities” where the DS1 could be put into service by simply adding a repeater shelf or an apparatus or doubler case. To the extent that Verizon does provide such minor upgrades to make DS1s available to its retail end users, rather than reject their orders, Verizon’s refusal to accord its CLEC wholesale customers comparable treatment is discriminatory and deprives CLECs of the ability to offer their own customers a competitive service.

7. Verizon’s rejection of UNE DS1 orders due to “no facilities” creates numerous problems for Allegiance, including delays in provisioning. For example, when Verizon rejects an order due to “no facilities,” it gives Allegiance two options: (1) either cancel the order and resubmit it at a later unspecified date when facilities may (or may not) be available or (2) cancel the order and resubmit it as an order for special access facilities. Neither of these options is acceptable. Under the first option, Allegiance is put in the position of having to inform its customer that it has no idea when or if it can deliver the service the customer ordered, because it cannot get a commitment date from Verizon as to when or if a UNE DS1 will be available. Under the second option, while Allegiance is able to obtain a special access circuit that it can use to deliver its integrated voice/data product to its customer in a more timely fashion, it is forced to pay Verizon significantly higher recurring and nonrecurring rates for the special access circuit than it would pay for a

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UNE DS1. In virtually all instances, Allegiance orders special access circuits when its UNE DS1 orders are rejected due to “no facilities” in an effort to meet its customers’ demands for service, rather than risk losing the customer.

8. There is a substantial difference in the rates Verizon charges for UNE DS1s and the rates it charges for special access DS1s. The monthly recurring UNE rates in Density Cell 1 in Virginia are \$110.61 for the DS1 loop plus \$16.81 for the cross connect. The monthly recurring special access rates are \$198.24 per DS1. The difference in the nonrecurring charges is even more extreme. The UNE DS1 nonrecurring charge is approximately \$72 per loop whereas the special access nonrecurring charge is \$355.

9. Aside from cost considerations, the impact of Verizon’s requirement that Allegiance cancel the UNE order and resubmit an order for a special access facility when it gets a “no facilities” reject adds significant delay to the provisioning process. Verizon’s requirement that Allegiance cancel the UNE order and resubmit a special access order increases the installation interval, and thereby delays initiation of service to the Allegiance customer, by approximately 30 additional days. As it is, 46% of the Firm Order Confirmations that Allegiance receives from Verizon South specify installation dates outside of Verizon’s standard published intervals and Verizon South meets Allegiance requested

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installation dates only 11% of the time. The additional delay caused by having to cancel the UNE order and resubmit a special access order merely prolongs an already too long provisioning process.

10. Verizon stands out among the other Regional Bell Operating Companies (“RBOCs”) in the number and variety of circumstances it characterizes as “no facilities” for purposes of rejecting UNE loop orders. Allegiance operates in 36 markets across the country and orders UNE products from every RBOC. No other RBOC rejects UNE orders for “no facilities” with the frequency or for the wide variety of reasons cited by Verizon. Pacific Bell, for example, will not reject UNE orders for “no facilities” for any of the reasons used by Verizon except lack of copper lines or defective copper. The rejection rates Allegiance experiences nationwide easily demonstrate that Verizon stands alone in its refusal to perform minor upgrades necessary to make DS1s available for use as UNEs. In May, 2002, Verizon South rejected 23% of Allegiance’s UNE DS1 orders due to no facilities regionwide, while all other RBOCs combined rejected just 3% of Allegiance’s UNE DS1 orders.

11. Allegiance is dependent upon Verizon to provide the last mile loop facilities it needs to reach its end users. Verizon’s liberal use of the “no facilities” excuse to avoid providing access to UNE DS1 loops adversely impacts Allegiance’s ability to provide timely and cost effective service to end users. This restricted access leaves Allegiance with two choices: either

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lose the customer or order far more expensive special access facilities. By unduly restricting its competitors' access to UNE loops at cost based rates, Verizon falls far short of meeting the standard for nondiscriminatory access to unbundled network elements.

12. To make a bad situation worse, Verizon has stated in recent meetings that it is evaluating its Special Access tariff and plans to modify that tariff to require CLECs to maintain a special access circuit for a minimum of one year prior to converting the circuit to a UNE. Of course, such a modification would force CLECs who purchase special access when their UNE orders are rejected due to no facilities to pay the much higher special access rates for a full 12 months. Such cost increases cannot help but severely limit the ability of CLECs to offer competitively priced service in Virginia, which will ultimately limit the choice of carriers available to the citizens of Virginia.

Doreen Best

Subscribed and sworn to before me
this 20th day of August 2002

Notary Public
My Commission expires: